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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/798,936	03/11/2004	Kenneth A. Chupa	AUS920031075US1	6909
7590 Barry S. Newberger P.O. Box 50784 Dallas, TX 75201				
04/17/2008				
EXAMINER				
LEE, MARINA				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/798,936

**Applicant(s)**

CHUPA ET AL.

**Examiner**

Marina Lee

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**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 January 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 January 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/5508)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

### DETAILED ACTION

1. Applicant's amendment and response dated January 30, 2008 in responding to the Office Action of October 30, 2007 provided in the rejection of all pending claims 1-20.

None of the claims has been amended.

Claims 8-20 have been cancelled.

None of the claims has been added.

Therefore, claims 1-7 are still pending in this application and which have been fully considered by the Examiner.

2. New replacing drawings are being accepted by Examiner.

3. Examiner withdraws the objection to the specification in view of Applicants' amendment to the specification.

4. Examiner withdraws the 35 USC 101 – Rejections to the claim 15-20 in view of Applicants' cancellation to the claims 8-20.

5. Applicant's arguing for the claims are not being anticipate by Garms because there is no language in Garms disclose the limitation each and every element of the Applicant's claims (see pages 8-23) are not persuasive as will be fully addressed under the Prior Art's Arguments – Rejections (item 6) bellows. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP §706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory

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action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

***Prior Art's Arguments – Rejections***

6. Applicant's arguments filed on January 30, 2007, especially on pages 8-10 of Remarks, are not persuasive as of following:

As to claim 1, Applicants contend that Garms does not disclose the language in the claim 1 limitation (see page 8-10 of Remarks: starting from ¶ 3, page 8 to ¶ 1, page 10), are not persuasive as follows:

First of all, Garms discloses "an incremental deployment process are done by constructing a deployable modules list in an application (e.g., Enterprise JavaBeans), then examine at least one of deployment descriptor for the application to determine (compare) if the at least one deployment descriptor contains an entry for each of the at least one deployable module. Meaning that each deployable module (deployable software component) in the construct list (preselected input archive file) are being used to compare with the at least one deployable module of the at least one deployment descriptor (preselected output/existing archive file) in the application. – See at least [0019]-[0021] of page 3: with emphasis added.

Secondly, the term "interface" is broadly interpreted as "the abstraction/high level of class/component". Since Garms discloses determining (compare) the deployment modules/classes for finding at least one deployment module (class /component) are the same in the at least one descriptor. The determination (comparing) step is done at the high level comparing (comparing each entry module tag to module tag) – See at least [0019]-[0022] of page 3 and [0050] of page 4 with the depict example application.xml example. Accordingly, Garms comparing in high level of deployment modules/classes are indeed anticipate the interface as Applicants have argued for.

Thirdly, Garms discloses "during examine at least one deployment descriptor for the application to determine if the at least one deployment description contains an entry for each of the at least one deployable module/software components (e.g., first , second deployable software components is inherent ), if there are identified deployable modules without corresponding entries (miscomparing) in the application's deployment descriptor , performs the flowing steps: construct a list of modules to deploy containing each deployable module that was not found in the deployment descriptor during examination, then add (tag)each module in the modules to the deploy list to the application's deployment descriptors" – See at least [0021-0024] of page 3, and [0050] of page 4 with the depict example application.xml example with emphasis added.

Accordingly, Garms does anticipate each and every element of claim 1 limitation.

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As per claims 2-7 depend directly or indirectly upon the base claim 1, and accordingly they also anticipate by Garms for at least the above indicated reasons.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 1, 2, 4, and 7 are rejected under 35U.S.C. 102(e) as being anticipated by Garms et al., (hereinafter – Garms), (U.S. Patent Application Publication No. 2004/0230942).

**As to claims 1**, Garms discloses a method for selectively deploying enterprise software comprising:

for each deployable software component (e.g., deployable module) in an preselected input archive file (e.g., the construct list), comparing interfaces(e.g., determining (compare) the deployment modules/classes for finding at least one deployment module (class /component) are the same in the at least one descriptor. The determination (comparing) step is done at the high level comparing (comparing each entry module tag to module tag)), for the deployable

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software component identified in a first descriptor file in said input archive file and a second descriptor file in a preselected output archive file (e.g., at least one deployment descriptor). –*See at least [0019-0021] of page 3, and [0050] of page 4 with the depict example application.xml example with emphasis added.*

if the comparing step miscompares for a first deployable software components, tagging said first deployable software component (“during examine at least one deployment descriptor for the application to determine if the at least one deployment description contains an entry for each of the at least one deployable module/software components (e.g., first , second deployable software components is inherent ), if there are identified deployable modules without corresponding entries (miscomparing) in the application's deployment descriptor , performs the flowing steps: construct a list of modules to deploy containing each deployable module that was not found in the deployment descriptor during examination, then add (tag) each module in the modules to the deploy list to the application's deployment descriptors” – *See at least [0021-0024] of page 3, and [0050] of page 4 with the depict example application.xml example with emphasis*

if comparing step miscompares for a second deployable software component, tagging said second deployable software component (“during examine at least one deployment descriptor for the application to determine if the at least one deployment description contains an entry for each of the at least one deployable module/software components (e.g., first , second deployable software components is inherent ), if there are identified deployable modules without corresponding entries (miscomparing) in the application's deployment descriptor ,

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performs the flowing steps: construct a list of modules to deploy containing each deployable module that was not found in the deployment descriptor during examination, then add (tag)each module in the modules to the deploy list to the application's deployment descriptors" – *See at least [0021-0024] of page 3, and [0050] of page 4 with the depict example application.xml example with emphasis*); and

deploying each tagged deployable software component(see page 3: [0024]).

**As per claims 2**, Garms further discloses wherein tagging a deployable software component comprises storing a name of the deployable software component in a file (e.g., module tag name of Deployment Descriptor such as application.xml and web-logic-application.xml– see pages: 4-5, [0050]-[0053]).

**As per claims 4**, Garms discloses further comprising:

if the first descriptor file and second descriptor file compare for the fist deployable software component, introspecting a binary class file for the first deployable software component in the input and output archive files (see page 4: [0031] & [0032]); and

if, in response to the introspection, a signature or return type of an interface of said binary class files miscompare, tagging the first deployable software component (see page 4: [0033] & [0034]).

**As to claim 7**, Garms further discloses wherein the comparing, tagging and deploying steps are performed in response to an execution of a build script invoking a selective deployer utility (e.g., each time the developer modifies the



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configuration of the application, changes can be immediately deployed to the server – automatically implement (emphasis added)). –See (page 3, [0006] & [0007]).

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Garms et al., (U.S. Patent Application Publication No. 2004/0230942), and view of Lagergren (U. S. Patent No. 6,964,042 B2).

As to claim 3, it is noted that Garms does not specifically disclose further comprising: if the first descriptor file and second descriptor file compare for the first deployable software component, comparing a size of a binary class file for the first deployable software component in the input and output archive files; and if the size of said binary class files miscompare, tagging the first deployable software component. However, Lagergren, in an analogous art, teaches optimizing iterative code using adaptive or dynamic size metric. The dynamic size metric may be calculated both for a set of predetermined factor (together with associated weights, and also for a set of variable factors determined during the runtime code introspections process. The predetermined factors, and their associated weights, may be varied to reflect the overall performance of the code

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in each optimization instance (see Lagergren, title, abstract, steps 30-31 of Fig. 4, col. 5: 26-67, and col. 6: 1-9).

It would have been obvious to one of ordinary skill in the art at the time invention was made to have been motivated to apply optimizing iterative code using adaptive or dynamic size metric of Lagergren in incremental deployment process of Garms code optimizing performance of particular module environment (e.g., EJB, Web). —See (*Lagergren*, col. 2: 10-20).

11. Claims 5 and 6, are rejected under 35 U.S.C. 103(a) as being unpatentable over Garms et al., (U.S. Patent Application Publication No. 2004/0230942), and view of Kovacs et al., (hereinafter — Kovacs), (U.S. Patent Application Publication No. 2004/0158571 A1).

**As to claims 5**, it is noted that Garms does not expressly disclose further comprising: opening said preselected output archive file; and if the step of opening the preselected output archive fails, tagging each deployable software component in the input archive file. However, Kovacs, in an analogous art, teaches validate deployment descriptor information (i.e. validator 302) to locate errors within deployment descriptor files (e.g., incorrect CMP field name, etc.) by displaying or highlighting the error message to the user. —See (Kovacs, 302, Fig. 3, and page 2, [0020] & [0021]).

It would have been obvious to one of ordinary skill in the art at the time invention was made to have been motivated to apply error validator 302 of Kovacs in deployment descriptor of Garms for assisting developers in user

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friendly interface (e.g., pop-up window) to identify the input errors and offer the suggesting solution to those errors (see Kovacs, page 2, [0021]).

**As to claims 6**, Kovacs further discloses wherein the step of tagging each deployable software component is performed in response to the stop of opening the preselected output archive throwing an exception (see Kovacs, page 2, [0020]&[0021]).

### ***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to application disclosure.

Ivanova (US 7,296,028 B1) is cited to teach mapping object-oriented program code to a database layer.

Garms et al. (US 7,296,255 B2) is cited to teach incremental application deployment.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marina Lee whose telephone number is (571) 270-1648. The examiner can normally be reached on M-F (11:00 am to 7:30 pm) Est..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tuan Q. Dam can be reached on (571) 272-3695. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information

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for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Marina Lee/

Examiner, Art Unit 2192

/Tuan Q. Dam/

Supervisory Patent Examiner, Art Unit 2192